

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Ryan Gold,)	
Petitioner)	
and)	CAUSE NO. 021212-28
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	
I.C. 20-5-63 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS

Procedural History

This is an unusual matter in that it involves two high schools within the same public school district, the Indianapolis Public Schools (IPS). Petitioner is an 18-year-old senior (d/o/b March 5, 1984) who attended Northwest High School for the first three years of high school. He transferred to Arlington High School for his senior year. Petitioner primary athletic interest is basketball. He enrolled in Arlington on August 14, 2002. The IHSAA Athletic Transfer Report was completed and forwarded to Northwest. The Northwest principal completed the form and signed it on September 10, 2002, indicating that he believed the transfer was primarily for athletic reasons and that further inquiry was needed. The Northwest principal did not return the Transfer Report to Arlington for another three weeks, and then only after Arlington inquired.¹ Arlington received and completed the form on October 3, 2002.

The Arlington principal verified that Petitioner had, indeed, established residency within the Arlington school district. The IPS Police, at the request of the IHSAA, also verified residency. However, the IPS Police report was not issued until November 13, 2002. On November 8, 2002, the IHSAA had

¹The Northwest principal initially testified that he attended a conference and that was why the delay occurred. However, the conference he attended was not during this period of time. Other Transfer Reports were not delayed, just Petitioner's. The Northwest principal then stated that the Respondent's by-laws do not require any specific time period to reply. This is disingenuous. These delaying tactics, reliance on rumor and innuendo, and baseless accusations by Northwest against Arlington significantly delayed Respondent's investigation and the Case Review Panel's hearing.

completed its investigation and determined Petitioner ineligible for athletic participation during the 2002-2003 school year due to **Rule C-19-4**.² This decision rests primarily on the finding that the move from Northwest to Arlington did not satisfy the criteria for a “bona fide change of residence.”³

Petitioner, through Arlington, timely appealed the adverse decision to Respondent’s Review Committee. The Review Committee conducted its proceeding on November 26, 2002, and issued its written decision on December 3, 2002, upholding the original determination that Petitioner is ineligible for athletic participation.

²The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but most of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-19-4** reads as follows:

Transfers for Primarily Athletic Reasons

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons.

³Respondent defines “*Bona Fide* Change of Residence” for **Rule C-19** purposes as follows:

Determination of what constitutes a ‘bona fide’ change of residence depends upon the facts in each case[;] however, to be considered, the following facts must exist:

- a. the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by any member of the student’s immediate family; and[,]
- b. the student’s entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.
- c. the change of residence must be genuine, without fraud or deceit, and with permanent intent.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on December 12, 2002.⁴ The CRP notified the parties by memorandum of December 12, 2002, of their respective hearing rights. The parent was provided with a “Consent to Disclose Student Information” form. The parent, on December 16, 2002, elected to have the hearing proceedings open to the public. A hearing date was set for January 10, 2003. The record of the proceedings before the Review Committee was photocopied and transmitted on December 18, 2002, to CRP members.⁵

The parties appeared on that date for the hearing. Petitioner was represented by counsel. Respondent was represented by counsel. A brief pre-hearing conference was conducted prior to the hearing, during which time Petitioner and Respondent submitted additional documents. Respondent objected based on hearsay to the introduction of Petitioner’s Exhibit P-1, a one-page letter from Petitioner’s pastor; Exhibit P-2, a one-page note regarding the medical condition of Petitioner’s mother; and Exhibit P-5, a one-page letter from the former Northwest basketball coach regarding the Northwest principal. The CRP noted the hearsay status of Exhibits P-1 and P-2, but permitted their use in the proceedings. The CRP did not permit the introduction of P-5. Petitioner’s Exhibits P-3 and P-4, which are photographs of the Arlington residence, were admitted without objection. Respondent tendered Exhibit R-1, a letter dated July 18, 2002, from the current Northwest coach to Petitioner. It was admitted without objection.

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable.⁶ I.C. 4-21.5-3-27(d).

⁴The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.

⁵The hearing was conducted before CRP members John L. Earnest, chair designee; Pamela A. Hilligoss; Michael L. Ross; Earl H. Smith, Jr.; Terry Thompson; and Brad Tucker. CRP Member James Perkins, Jr., recused himself from participation in and consideration of this matter due to his employment by IPS.

⁶The CRP wishes to express its dismay and dissatisfaction that so much of this dispute is clouded by rumor, innuendo, subterfuge, and baseless accusations. This has made the discovery of relevant facts all the more difficult.

FINDINGS OF FACT

1. Petitioner is an 18-year-old senior (d/o/b March 5, 1984) enrolled in Arlington High School within The Indianapolis Public Schools. He attended Northwest High School, also within the Indianapolis Public Schools, for his freshman, sophomore, and junior years.
2. Petitioner, at the beginning of his junior year, had two brothers. He, his two brothers, and his mother lived with his maternal grandmother.⁷ His mother had lived in this house with the maternal grandmother for thirty-nine (39) years. His older brother, who had significant disabilities from birth, passed away on February 22, 2002. His older brother required care, both medical and from the family. Petitioner was close to his brother, although communication was difficult.
3. Petitioner's mother had to resign from her job in order to attend to the needs of the older brother during his last illness. Following his death, Petitioner and his mother sought counseling from the pastor of their church. Petitioner and his family are active members of the church, which is located nearby the Northwest residence. The pastor continues to provide counseling to the family. Petitioner's mother experienced depression and is prescribed medication to address this condition.
4. At some point during the Spring of 2002, the family determined that remaining in the Northwest residence may not be in the better interests of the family. Petitioner, who now occupied his older brother's former room, had difficulties doing so because of the memories. The family experienced episodes of profound sadness.
5. Petitioner's mother had concerns about moving. Her mother is 75 years old, and she had lived in the house for thirty-nine (39) years. She did not possess financial resources that would enable her to move her family into another house or apartment. The father of the older brother who had passed away indicated that his residence was large enough to accommodate the family. This residence is located within the Arlington High School attendance area.
6. At the end of the basketball season during the 2001-2002 school year, the head basketball coach announced his resignation. Petitioner was close to the coach. He was apparently close to his teammates as well, having been awarded the Leadership Award. Petitioner confided in some of his teammates that his family may be moving. This resulted in rumors that Petitioner was transferring. Petitioner apparently intended on remaining at Northwest to complete his

⁷For ease of reference, this residence will be referred to as the "Northwest residence." The subsequent move to the eastside of Indianapolis will be referred to as the "Arlington residence."

senior year under a so-called “Senior Rights” rule.⁸ He discussed the possibility with the Northwest athletic director, who explained the rule to him and advised him that transportation would be his responsibility. Although Petitioner explored several possible means of obtaining transportation, including municipal buses, he had no effective or reliable means of being transported from the Arlington residence to Northwest High School on a daily basis.

7. The family did not discuss the reasons for the pending move with Northwest administration because the family deemed the matter a personal one. Petitioner’s mother did express on several occasions, even as late as July of 2002, that she wished for Petitioner to complete his senior year at Northwest.
8. An assistant basketball coach for Northwest, who assisted the former coach and the current coach, is a retired individual. He did not testify to any other function at Northwest other than as an assistant basketball coach. He has ready access to the school building. In May of 2002, the assistant coach took Petitioner out of class so that he could meet with the assistant coach and the Northwest principal. This meeting occurred after Petitioner’s mother had telephoned the assistant coach and asked him to talk to Petitioner. The three discussed the rumors that Petitioner would be transferring. The Northwest principal attempted to convince Petitioner not to transfer. During this meeting, the Northwest principal told Petitioner who the new coach would be, although this had not been announced publicly.
9. The new coach assumed his responsibilities before the Northwest school year ended. The school year had ended at his previous assignment. The new coach began morning conditioning drills before school ended. He provided transportation to these drills for Petitioner and other members of the basketball team. The assistant basketball coach described the new coach as a “disciplinarian,” but the former coach was also described as demanding. The coach had summer practices, which he wanted Petitioner to participate in. Petitioner had a summer job at a municipal park that did not end until 4:30 p.m. each day, although sometimes he could not leave the position until 6:30 p.m. after all the children participating in the recreational program had been picked up. As a result, he often missed the practices.⁹
10. On or about July 1, 2002, during a basketball drill, a dispute arose between Petitioner and

⁸Although the “Senior Rights” rule was never fully explained, it appears to be an intradistrict version of I.C. § 20-8.1-6.1-1(a)(7), which permits a student to remain at his former school district even after the family moves elsewhere so long as the student had legal settlement in that school district at the end of the student’s junior year.

⁹There is some concern whether these practices were mandatory. The new coach said they were not, but his correspondence (Exhibit R-1) tends to indicate otherwise. The current Northwest athletic director referred to Petitioner’s lack of attendance as “unexcused absences” (Transcript, p. 111).

another player. Although accounts from this point forward vary, the following did occur: The new coach threw a basketball at Petitioner and swore at him, directing him to leave the gym.¹⁰ A meeting occurred later that evening with Petitioner, the new coach, the assistant coach, and Petitioner's mother. Differences were apparently worked out. Petitioner's mother asserted that Petitioner would be returning to Northwest. The assistant coach and the new coach often visited Petitioner at his summer job. Petitioner did not confide in the new coach the difficulties he was experiencing because he did not know him well enough.

11. Both the Northwest principal and the new coach alleged that Petitioner wanted to transfer so as to play with another player he knew from AAU basketball. However, Petitioner never made such statements to either person, and the other player never played for Arlington.¹¹
12. The family rented a truck and moved on August 1, 2002, from the Northwest residence to the Arlington residence. The move took approximately four hours. The family did not move all of its belongs from the Northwest residence because the Arlington residence was partially furnished. Petitioner's mother initially paid rent but her financial resources are such that, at present, she provides for the costs of her family's groceries.
13. The Arlington principal directed a social worker to verify residency. This is the standard procedure for Arlington for a move-in. The Arlington principal is satisfied that Petitioner does reside properly within the Arlington attendance area. IPS police, at the request of the Respondent, also verified that Petitioner is properly residing at the Arlington residence.
14. Although the family moved in August of 2002, Petitioner's mother continued to visit the Northwest residence two to three times a week, where she would often stay overnight. At present, she stays overnight only on Saturday in order to attend church the following day.
15. Petitioner's family did not effect a change of address but continued to receive mail at the Northwest residence. A change of address was effected after the IHSAA expressed concern.

¹⁰The assistant coach, in a letter to IHSAA (Transcript, p.110) described the incident. However, under oath, he acknowledged he did not see what happened. He was present but he had his back turned. He also acknowledged that other statements in his letter, although appearing to be from first-hand knowledge, were not so. He did not hear Petitioner make any of the statements attributed to him, and he did not see Petitioner ever wearing Arlington practice gear.

¹¹Northwest administration also insinuated that Arlington had exercised undue influence in Petitioner's transfer, but provided no proof for this accusation. The IHSAA discounted these assertions and did not base its decision upon them. The CRP chooses not to accord any credibility to these allegations.

16. Petitioner continues to do well academically. He finds Arlington more academically challenging. He also stated that Arlington provides more academic support for its athletes.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Although, as noted *supra*, this dispute is aggravated by excessive reliance on hearsay, rumor, and innuendo, especially by Northwest administration, the decision of the Respondent that is under review comes down to an analysis of whether the move from the Northwest residence to the Arlington residence was a “bona fide change of residence.” The Respondent has a three-prong analysis for this purpose.
3. Under the first prong, “the original residence must be abandoned as a residence; that is, sold, rented or disposed of, or in the process of being disposed of as a residence and must not be used as a residence by **any** member of the student’s immediate family” (emphasis original). In this matter, the family moved for what the CRP considers *bona fide* reasons, but the Northwest residence has not been sold, rented, or disposed of, or in the process of being disposed. The maternal grandmother continues to reside there. The Petitioner’s mother resided there for a half-week until recently, and still resides there one night a week.
4. The second prong requires that “the student’s entire immediate family must make the change and take with them the household goods and furniture appropriate to the circumstances. For eligibility purposes, a single family unit may not maintain two or more residences.” The Petitioner’s family did not take with them all of their household goods and furniture. This was explained that the Arlington residence was partially furnished for their purposes. However, the Petitioner’s family moved into a single family unit rather than a separate family unit.
5. The third prong requires “the change of residence” to be “genuine, without fraud or deceit, and with permanent intent.” There is no showing that Petitioner’s family attempted to or is presently

engaged in any fraud or deceit. The Respondent questions whether the move is genuine in that a change of address for the purpose of receiving mail did not occur until after Respondent raised the issue.

6. The Petitioner has not satisfactorily met all three prongs of the Respondent's criteria for a "bona fide change of residence," as defined.

ORDER

1. The Respondent's determination that Petitioner is ineligible for interscholastic athletic competition during the 2002-2003 school year, pursuant to **Rule C-19-4**, is upheld. The CRP vote was 5-2 in this regard.
2. Because this is an unusual situation involving two high schools within the same public school district, and because of concerns the CRP has with the disposition of this matter by Northwest High School, a copy of this decision will be provided to the local superintendent for consideration as he deems necessary. The record shall be made available to the local superintendent should he so request.

DATE: January 15, 2003

/s/ John L. Earnest, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.